

## DEPARTMENT OF BENEFIT PAYMENTS



April 23, 1974

ALL-COUNTY LETTER NO. 74-68

TO: ALL COUNTY WELFARE DIRECTORS

**OBSOLETE**

SUBJECT: SMOCK v. CARLESON Superseded by

*ACL # 77-15*

REFERENCE:

*Issued 3-17-77*

A Judgment was issued in the case of Smock v. Carleson by the Superior Court of Alameda County on February 26, 1974, and was amended on March 25, 1974.

The Judgment (page 2, lines 18-24) orders that the Director of Benefit Payments and his:

"...officers, agents, employees, representatives, and each of them, their successors in office, and those acting in their behalf, and all persons acting in concert or participating with them, shall be and are hereby permanently enjoined from enforcing EAS § 44-213.4 to the extent that it results in the exclusion of a needy [unmarried] natural parent, residing with his or her eligible child(ren), from the AFDC budget unit for purposes of AFDC grant computations."

The word "unmarried" was inadvertently omitted from this portion of the Judgment.

You are directed to comply with the portion of the Judgment quoted above. Effective immediately, EAS § 44-213.4 must be applied so that a needy unmarried natural parent residing with his eligible child(ren) is included in the FBU for purposes of computing the AFDC grant as well as for the purpose of determining financial eligibility.

TO: ALL COUNTY WELFARE DIRECTORS

April 23, 1974

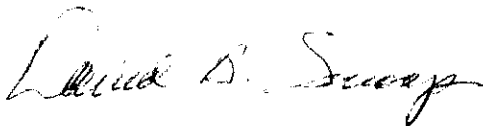
Page Two

The Judgment is effective as of February 27, 1974, the date of Entry of Judgment. You are directed to identify and locate all individuals who since February 27, 1974 have had their grants terminated or applications denied, or whose grants were computed contrary to the Judgment. Eligibility and grant redeterminations and payment of retroactive aid in such cases shall be accomplished as soon as administratively possible.

A Notice of Appeal has been filed in the Smock case. Retroactive aid prior to February 27, 1974 is not required while the case is under appellate review. I have been advised by the Attorney General that the portions of the Judgment not quoted above are stayed pending the appeal.

A copy of the Judgment and the Correction to the Judgment is attached.

Sincerely,

A handwritten signature in cursive script, reading "David B. Swoap".

DAVID B. SWOAP  
Director

Attachments

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Attorneys for Petitioners-Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

RUTH HEFFENER SMOCK, et al., )  
 )  
Petitioners-Plaintiffs, )  
 )  
vs. )  
 )  
ROBERT B. CARLESON, et al., )  
 )  
Respondents-Defendants. )

Entry Date 11.1.73  
322 78 1009  
Jack C. F. County Clerk  
By *[Signature]* Deputy

FILED

FEB 26 1974

JACK C. F. County Clerk  
By *[Signature]* Deputy

NO. 432978

JUDGMENT BY COURT  
UNDER CCP 5437c

On August 16, 1973, this Court granted the motion of  
petitioners-plaintiffs under CCP 5437c to strike the answer of

1 respondents-defendants and to enter judgment for petitioners-  
2 plaintiffs. In accordance with that order,

3 IT IS HEREBY ADJUDGED AND DECREED that the provisions  
4 of Eligibility and Assistance Standards ("EAS") §44-213.4 are  
5 inconsistent with, alter the scope of and impair the directive  
6 of the Legislature in sections 11201 and 11250 of the Welfare  
7 and Institutions Code that AFDC shall be granted to families  
8 with related children under the age of 18 years in need thereof  
9 because they have been deprived of parental support or care  
10 due to the unemployment of a natural parent or parents.

11 For the foregoing reason and pursuant to Govt. Codes  
12 §§11373 and 11374, EAS §44-314.4 is void and of no effect in-  
13 sofar as it operates to exclude a needy unmarried natural parent,  
14 residing with his or her eligible child(ren), from the AFDC  
15 budget unit for purposes of AFDC grant computation.

16 IT IS FURTHER HEREBY ORDERED that the respondents-  
17 defendants, their officers, agents, employees, representatives,  
18 and each of them, their successors in office, and those acting  
19 in their behalf, and all persons acting in concert or partici-  
20 pating with them, shall be and are hereby permanently enjoined  
21 from enforcing EAS §44-213.4 to the extent that it results in  
22 the exclusion of a needy natural parent, residing with his or  
23 her eligible child(ren), from the AFDC budget unit for purposes  
24 of AFDC grant computations.

25 IT IS FURTHER ORDERED that a writ of mandate shall  
26 issue from this Court commanding respondents-defendants and

1 their successors in office forthwith:

2 1. To return all money withheld from each of the named  
3 petitioners-plaintiffs, pursuant to EAS §44-213.4, from  
4 October 1, 1971, or the date of his or her application for  
5 assistance if later, through and including the date of entry  
6 of this judgment, within sixty (60) days following the date  
7 of entry of this judgment;

8 2. For the purposes of providing notice to the members  
9 of petitioners-plaintiffs' class that they are eligible for  
10 the return to them of all money withheld pursuant to EAS  
11 §44-213.4 from October 1, 1971, or the date of their applications  
12 for assistance if later, through and including the date of entry  
13 of this judgment:

14 (a) To take appropriate action to instruct each  
15 and every County Welfare Department to include such  
16 notice (the wording of which is to be specified by  
17 respondents-defendants and approved by counsel for  
18 petitioners-plaintiffs) with and no later than the  
19 first mailing of a "stuffer" or notice of a general  
20 character that may be sent to all of its AFDC recipients  
21 subsequent to the forty-fifth day after the date of  
22 entry of this judgment;

23 (b) To take appropriate action to instruct each and  
24 every County Welfare Department to immediately post the  
25 same notice as in (a) above, in a conspicuous place  
26 and manner in the public areas of each office of the

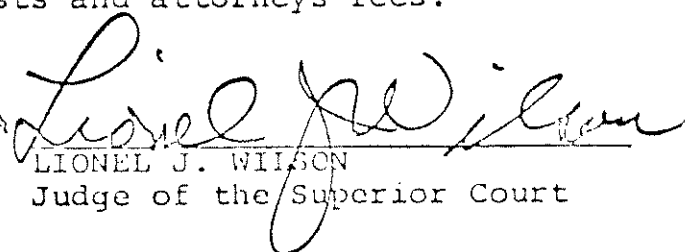
County Welfare Department for a period of at least  
nine (9) months.

3. To make and file a return to said writ within  
ninety (90) days following service thereof, setting forth what  
they have done to comply.

IT IS FURTHER ORDERED that this Court will retain  
jurisdiction over the issue of whether or not petitioners-  
plaintiffs are entitled to costs and attorneys fees.

Dated:

and presented for signature  
and signed FEB 26 1974

  
LIONEL J. WILSON  
Judge of the Superior Court

Judgment entered on \_\_\_\_\_, 1973, in the  
Judgment Book, Volume No. \_\_\_\_\_, Page \_\_\_\_\_.

JACK G. BLUE, Clerk

By \_\_\_\_\_  
Deputy Clerk

(ENDORSED)  
**FILED**

MAR 25 1974

JACK G. BLUE, County Clerk  
Louis Hurley, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

RUTH HEFFENER SMOCK, et al.,	)	
	)	
Petitioners-Plaintiffs,	)	NO. 432978
	)	
vs.	)	CORRECTION TO
	)	<u>JUDGMENT (CCP §473)</u>
ROBERT B. CARLESON, et al.,	)	
	)	
Respondents-Defendants.	)	
	)	

GOOD CAUSE APPEARING THEREFOR, it is ordered that the JUDGMENT BY COURT UNDER CCP §437c, entered on February 27, 1974, in Book 322 at page 18 (reel), be and is hereby corrected by making the following changes:

1. Change paragraph 2 to paragraph 3;
2. Insert the following at page 3, line 8:

"2. To return to each member of petitioners-plaintiffs' class, who may inquire or make application therefor, within a reasonable time following such inquiry or application, all money withheld from him or her pursuant to EAS §44-213.4 from October 1, 1971, or the date of his or her application for

1 assistance if later, through and including the date of entry of  
2 the judgment";

3 3. At page 3, line 20, change "AFDC" to "AFDC-U";

4 4. Insert at page 3, line 22, after the semicolon,  
5 the following:

6 "provided that, if no such mailing occurs within ninety  
7 (90) days after the date of entry of the judgment, then to include  
8 such approved notice with and no later than the first mailing of  
9 a "stuffer" or notice of a general character that may be sent to  
10 all of its AFDC recipients subsequent to the ninetieth day after  
11 the date of entry of the judgment;"

12 5. Insert the following at page 4, line 6:

13 "IT IS FURTHER ORDERED that a peremptory writ of mandate  
14 shall issue from this Court remanding the proceedings as to  
15 Petitioner CAROL AMYX to Respondent CARLESON and his successors  
16 in office and commanding respondent and his successors in office  
17 forthwith:

18 (1) To set aside the decision dated August 18,  
19 1972, in the proceeding entitled, 'In the Matter of the Hearing  
20 of CAROL AMYX;'

21 (2) Immediately upon service of the said writ and  
22 at all times thereafter to include both petitioner CAROL AMYX  
23 and her child's other unmarried parent in the Family Budget Unit  
24 for purposes of determination of financial eligibility while they  
25 remain needy and reside with the child;

26 (3) To determine within sixty (60) days of the

1 date of entry of this judgment the full additional amount of aid  
2 to which petitioner's family was entitled, by including both  
3 unmarried natural parents in the grant computation during the  
4 entire period October 1, 1971, through and including the date of  
5 entry of this judgment;

6 (4) Immediately upon determination of the amount  
7 specified in the preceding paragraph, to pay that amount to  
8 petitioner's family;

9 (5) To take any further action specially enjoined  
10 upon respondent by law;

11 (6) To make and file a return to said writ within  
12 ninety (90) days following service thereof, setting forth what  
13 he has done to comply."

14 Dated: MAR 25

15 MAR 25 1974

16 LIONEL J. WILSON

17 JUDGE OF THE SUPERIOR COURT  
18  
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